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January 5, 2015

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**Via ECF**

The Honorable Edgardo Ramos, U.S.D.J.  
Thurgood Marshall United States Courthouse  
Courtroom 619  
40 Foley Square  
New York, NY 10007

***Re: Defendants' Response to Plaintiffs' Request for Court Order  
to Defendants to Refrain From Taking  
Retaliatory Actions and to Uphold The Status Quo.  
Rodpracha, et al. v. Pongsri Thai Restaurant Corp. et al. 14-cv-2451***

Dear Honorable Judge Ramos:

I am writing in response to Plaintiffs' attorney's December 24, 2014 Christmas Eve weekend letter requesting emergency relief. The request is procedurally, factually and legally deficient.

There currently are about 65 employees working for Defendants, at least 21 of whom already are opt-in Plaintiffs in this proceeding.

Plaintiff Kitipong Rodpracha worked four days a week as a cook at the wok station. When he worked on the wok station four days a week he was not performing well and his orders were not going out in a timely manner. He would sleep on the job (see pictures attached), leave the restaurant at will, and take half days off whenever he wanted without notice or permission. Indeed, a majority of the kitchen staff threatened to go on strike because of Rodpracha's refusal to perform his job. The other employees had to work faster and harder to cover for Rodpracha. This put a major burden onto the other cooks to cover his scheduled shifts and job duties.

When another cook left the Company, the Company assigned Rodpracha to work on the wok station two days a week and fry/grill station two days to alleviate the wok station pressure. A week after this change, Rodpracha asked to work only his two days at the wok station and not work his other days. The entire kitchen staff was aware of his request. The Company accommodated his request and assigned Rodpracha two days of work a week.

To accommodate his requested two days of work, the Company rescheduled the other employees. Two weeks after Rodpracha requested to work only two days, he requested a four day week. However, by then, the kitchen staff was working well and the other employees rescheduled their work weeks and personal day-to-day lives to cover his shift.



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There is neither a factual, legal nor equitable basis to accommodate Rodpracha as he wishes to the detriment of the entire kitchen staff and Company. The staff and Company have accommodated Rodpracha, but no longer can do so. The staff works hard and their job responsibility benefits all employees. Rodpracha's lack of work and responsibility reduced the morale of the other employees and required them to cover his work. Indeed, there is no reason to reschedule the kitchen staff and rehire Rodpracha who quit and was not fired.

Pictures were taken of Rodpracha but only of him and only to document that he, among other things, was sleeping on the job and taking unauthorized breaks. These pictures were taken for internal use only and were not intended to disparage him or prevent his work or the work of Plaintiffs elsewhere. The Company is not taking pictures of Plaintiffs generally.

For the foregoing reasons, the relief requested by Rodpracha should be denied. There is no basis for a cease and desist order or reinstatement of Rodpracha.

Very truly yours,



JOEL SPIVAK

JS:sbc